IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11655 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISWAMANGALAM KELAVANI MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11655 of 2004

MR SHIRISH JOSHI for Petitioner No. 1

MR DIPEN DESAI, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 22/09/2004

ORAL JUDGEMENT

#. Rule. Mr.Dipen Desai, learned AGP, waives service of rule for the respondent State. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by the State Government dated 16.1.2004 in refusing to grant No Objection Certificate for starting new B.Ed. College.

#. Mr.Joshi, learned advocate appearing for the petitioner, submitted that in fact, while refusing to grant No Objection Certificate, no reasons have been assigned and in a most arbitrary manner, No Objection Certificate is refused. He further submitted that as such there is no reason for not issuing No Objection Certificate and the petitioner has complied with all necessary conditions which are required for the purpose of issuance of No Objection Certificate and for the purpose of running B.Ed. college.

#. Shri Dipen Desai, learned AGP, however, tried to support the order passed by the Secretary, but the fact remains that the impugned order dated 16.1.2004 is non-speaking order and no reasons have been assigned which prompted the State Government to refuse No Objection Certificate. As held by the Apex Court in the case of Notified Area Committee Vs. Additional Director, Consolidation and others, reported in (2002) 10 SCC 87, when the order is subject to challenge before the higher forum, it is necessary to assign necessary reasons, so that, the higher forum can come to know as to what was passing in the mind of the authority while refusing No Objection Certificate. In view of the fact that no reasons have been assigned while refusing No Objection Certificate to the petitioner Trust, this Court is not in a position to know as to what was passing in the mind of the authority which prompted them to refuse No Objection Certificate. On this ground alone, the impugned order dated 16.1.2004 is required to be quashed and set aside and the matter is required to be remanded to the State Government for deciding the same afresh with a direction to the State Government to pass appropriate order and if the authority is of the opinion that No Objection Certificate is not required to be granted, then they are required to specifically assign the reasons, in detail, for not granting No Objection Certificate.

#. For the reasons stated above, the impugned order dated 16.1.2004 is hereby quashed and set aside. The matter is remanded to the State Government for deciding afresh with regard to grant of No Objection Certificate to the petitioner Trust afresh and shall pass speaking order after giving an opportunity of being heard to the petitioner. The State Government may take the decision in accordance with law as early as possible preferably

within a period of two months from the date of receipt of the writ of this order.

#. In the result, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)